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STATUTORY INSTRUMENTS

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**2001 No. 1004**

**The Social Security (Contributions) Regulations 2001**

**[<sup>F1</sup>PART 7A**

**Electronic Communications**

**Textual Amendments**

- F1** Pt. 7A inserted (6.4.2004) by [The Social Security \(Contributions, Categorisation of Earners and Intermediaries\) \(Amendment\) Regulations 2004 \(S.I. 2004/770\)](#), regs. 1(1), **23**

**Whether information has been delivered electronically**

**90A.**—(1) For the purposes of these Regulations, information is taken to have been delivered to an official computer system by an approved method of electronic communications only if it is accepted by that official computer system.

(2) References in these Regulations to information and to the delivery of information must be construed in accordance with section 135(8) of the Finance Act 2002 (mandatory e-filing).

**Proof of content of electronic delivery**

**90B.**—(1) A document certified by the Board to be a printed-out version of any information delivered by an approved method of electronic communications is evidence, unless the contrary is proved, that the information—

- (a) was delivered by an approved method of electronic communications on that occasion, and
- (b) constitutes everything which was delivered on that occasion.

(2) A document which purports to be a certificate given in accordance with paragraph (1) is presumed to be such a certificate unless the contrary is proved.

**Proof of identity of person sending or receiving electronic delivery**

**90C.** The identity of—

- (a) the person sending any information delivered by an approved method of electronic communications to the Board,
- (b) the person receiving any information delivered by an approved method of electronic communications by the Board,

is presumed, unless the contrary is proved, to be the person recorded as such on an official computer system.

**Information sent electronically on behalf of a person**

**90D.**—(1) Any information delivered by an approved method of electronic communications—

*Status: Point in time view as at 13/08/2009.*

*Changes to legislation: There are currently no known outstanding effects for the The Social Security (Contributions) Regulations 2001, PART 7A. (See end of Document for details)*

- (a) to the Board, or
- (b) to an official computer system,

on behalf of a person is taken to have been delivered by that person.

(2) But this does not apply if the person proves that the information was delivered without the person's knowledge or connivance.

#### **Proof of delivery of information sent electronically**

**90E.**—(1) The use of an approved method of electronic communications is presumed, unless the contrary is proved, to have resulted in the delivery of information—

- (a) to the Board, if the delivery of the information has been recorded on an official computer system;
- (b) by the Board, if the despatch of the information has been recorded on an official computer system.

(2) The use of an approved method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the delivery of information—

- (a) to the Board, if the delivery of the information has not been recorded on an official computer system;
- (b) by the Board, if the despatch of the information has not been recorded on an official computer system.

(3) The time of receipt or despatch of any information delivered by an approved method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

#### **Proof of payment sent electronically**

**90F.**—(1) The use of a method of electronic communications is presumed, unless the contrary is proved, to have resulted in the making of a payment—

- (a) to the Board, if the making of the payment has been recorded on an official computer system;
- (b) by the Board, if the despatch of the payment has been recorded on an official computer system.

(2) The use of a method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the making of a payment—

- (a) to the Board, if the making of the payment has not been recorded on an official computer system;
- (b) by the Board, if the despatch of the payment has not been recorded on an official computer system.

(3) The time of receipt or despatch of any payment sent by a method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

#### **Use of unauthorised method of electronic communications**

**90G.**—(1) This regulation applies to information which is required to be delivered to the Board or to an official computer system under a provision of these Regulations.

(2) The use of a method of electronic communications for the purpose of delivering such information is conclusively presumed not to have resulted in the delivery of that information, unless

that method of electronic communications is for the time being approved for delivery of that kind under that provision.

### Mandatory electronic payment

**90H.**—(1) If an e-payment notice has been issued to an employer in respect of a tax year under regulation 199 of the PAYE Regulations (large employers required to make specified payments under those Regulations electronically), he must pay the specified payment using an approved method of electronic communications.

(2) Paragraph (1) applies regardless of whether a payment of tax is due under regulation 68 of the PAYE Regulations (payment and recovery of tax by employer).

(3) If the Board have given a direction under regulation 199(3) of the PAYE Regulations requiring a particular method of electronic communications to be used in the case of an employer, he must use that method.

[  
F<sup>2</sup>(4) This regulation does not apply to a payment of contributions, whether primary or secondary, in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force ]

#### Textual Amendments

**F2** Reg. 90H(4) added (6.4.2007) by [The Social Security Contributions \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1056\)](#), regs. 1, 6

### Employer in default if specified payment not received by applicable due date

**90I.**—(1) This regulation applies if an employer is required to make a specified payment by an approved method of electronic communications in accordance with regulation 90H.

(2) The employer is in default if the specified payment is not received in full by the Board (whether by an approved method of electronic communications or otherwise) on or before the date by which that payment is required in accordance with paragraph 10 of Schedule 4.

(3) But the employer is not in default if—

- (a) the employer had a reasonable excuse for failing to make the specified payment in a manner which secures that it is received in full by the Board on or before the applicable due date, and
- (b) the specified payment is received in full by the Board without unreasonable delay after the excuse ceased.

(4) Inability to pay is not a reasonable excuse for the purposes of sub-paragraph (3)(a).

(5) A payment is not treated as received in full by the Board on or before the date by which that payment is required in accordance with paragraph 10 of Schedule 4 unless it is made in a manner which secures (in a case where the payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the payment becomes available to the Board.

### Default notice and appeal

**90J.**—(1) The Board must issue a default notice to any person who appears to be in default under regulation 90I in respect of a specified payment.

*Status: Point in time view as at 13/08/2009.*

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- (2) A person may appeal against a default notice by giving notice to the Board within 30 days of the issue of the default notice.
- (3) The ground of appeal is that the person is not in default.
- (4) If the appeal is successful the default notice must be withdrawn.
- (5) Regulation 90Q (appeals: supplementary provisions) applies to appeals under this paragraph.

**Default surcharge**

**90K.**—(1) An employer in default in respect of any specified payment to whom—

- (a) a default notice under regulation 90J, and
- (b) a surcharge notice under regulation 90L,

have been issued, is liable to a surcharge.

(2) The surcharge is the sum of the surcharges, calculated in accordance with paragraph (3), in respect of each default relating to the tax year, in which were made the relevant payments to which the specified payment referred to in paragraph (1) relates.

(3) The surcharge in respect of each default is the specified percentage of (A - B)

(4) In paragraph (3)—

- (a) A is the total amount of contributions due for the tax year in which the relevant payments to which the specified payment relates were made ;
- (b) B is the total of the amounts deducted from A under—
  - <sup>F3</sup>(i) . . . . .
  - (ii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994,
  - (iii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002,
  - (iv) regulation 2 of the Statutory Sick Pay (Compensation of Employers) and Miscellaneous Provisions Regulations 1983 and articles 2 and 3 of the Statutory Sick Pay Percentage Threshold Order 1995, and
  - (v) regulation 44B of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993;

(c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 1.

**Table 1**

Specified percentage for each default in a surcharge period

<i>1 Default number (within a surcharge period)</i>	<i>2 Specified percentage</i>
1st	0%
2nd	0%
3rd	0.17%
4th	0.17%
5th	0.17%
6th	0.33%

7th	0.33%
8th	0.33%
9th	0.58%
10th	0.58%
11th	0.58%
12th	0.83%

- (5) A surcharge period is a period which—
- (a) begins on the day following the date by which payment is required in accordance with paragraph 10 for the first specified payment in respect of which the employer is in default, and
  - (b) ends at the end of a tax year in relation to which the employer has not been in default in respect of any specified payment.
- (6) A surcharge payable under this paragraph is payable 30 days after the issue of the surcharge notice.

(7) Section 102 of the Management Act (mitigation of penalties) applies to a surcharge payable under this paragraph as if it were a penalty.

[<sup>F4</sup>(8) Section 108 of the Finance Act 2009 (suspension of penalties during currency of agreement for deferred payment) applies to a surcharge payable under this regulation with the following modifications—

- (a) in subsections (1)(a), (1)(b) and (4)(a) omit the words “of tax”,
- (b) for subsection (5) substitute the following—
  - “(5) The references to an amount and penalty referred to in subsections (1) and (2) are—

Amount	Penalty
Specified payments within the meaning of regulation 90M of the Social Security (Contributions) Regulations 2001	Surcharge under regulation 90K of the Social Security (Contributions) Regulations 2001”

, and

- (c) omit subsections (7), (8), (9), and (11).]

**Textual Amendments**

- F3** Reg. 90K(4)(b)(i) omitted (6.4.2006) by virtue of [The Social Security \(Contributions\) \(Amendment No. 2\) Regulations 2006 \(S.I. 2006/576\)](#), regs. 1, 6
- F4** [Reg. 90K\(8\)](#) inserted (13.8.2009) (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 3

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**Surcharge notice and appeal**

**90L.**—(1) The Board must issue a surcharge notice to an employer who has been in default on three or more occasions during a surcharge period and consequently will be liable to a surcharge under regulation 90K.

- (2) The surcharge notice must show the total surcharge liability for the tax year.
- (3) The surcharge notice must be issued within 6 years of—
  - (a) the end of the tax year, or
  - (b) if earlier, the date on which the employer delivered a return in accordance with paragraph 22 of Schedule 4 (return by employer at end of year).

(4) An employer may appeal against a surcharge notice by giving notice to the Board within 30 days of the issue of the surcharge notice.

- (5) The grounds of appeal are—
  - (a) that the numbers of defaults stated in the notice is incorrect, or
  - (b) that the amount of the surcharge is incorrect.

(6) But paragraph (5)(a) does not apply in respect of a disputed default which has already been the subject of an appeal under regulation 90J, following which the default notice was not withdrawn.

**[<sup>F5</sup>Paragraph 22 return and specified payments]**

**90M.** In this Part—

[<sup>F6</sup>“paragraph 22 return” means the return and accompanying information required by paragraph 22 of Schedule 4 (return by employer at the end of the year);]

“specified payments” means payments of earnings related contributions under paragraph 10 [<sup>F7</sup>of Schedule 4] (payment of earnings-related contributions monthly by employer) in respect of tax months in the tax year to which the e-payments notice issued under regulation 199 of the PAYE Regulations relates.

**Textual Amendments**

- F5** Reg. 90M heading substituted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 4
- F6** Words in reg. 90M substituted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 5(a)
- F7** Words in reg. 90M inserted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 5(b)

**Mandatory use of electronic communications**

**90N.**—[<sup>F8</sup>(1) Where an employer is required to deliver a relevant annual return by an approved method of electronic communications to Her Majesty’s Revenue and Customs under regulation 205 of the PAYE Regulations (mandatory use of electronic communication for delivering relevant annual returns), the employer must also deliver the paragraph 22 return required in relation to that tax year to an official computer system using an approved method of electronic communications.]

<sup>F9</sup>(2) .....

(3) If the Board have given a direction under Regulation [F10205B(1)] of the PAYE Regulations requiring a particular method of electronic communications to be used in the case of an employer, he must use that method.

[  
F11(4) This regulation does not apply to a return in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force ]

[F12(5) The expression “relevant annual return” has the meaning given in regulation 206A of the PAYE Regulations.]

#### Textual Amendments

- F8 Reg. 90N(1) substituted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 6(a)
- F9 Reg. 90N(2) omitted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 6(b)
- F10 Word in reg. 90N(3) substituted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 6(c)
- F11 Reg. 90N(4) added (6.4.2007) by [The Social Security Contributions \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1056\)](#), regs. 1, 7
- F12 Reg. 90N(5) inserted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 6(d)

#### Standards of accuracy and completeness

90O.—(1) [F13Any paragraph 22 return] delivered by a method of electronic communications must meet the standards of accuracy or completeness set by specific or general directions given by the Board.

(2) [F13Any paragraph 22 return] which fails to meet those standards must be treated as not having been delivered.

#### Textual Amendments

- F13 Words in reg. 90O substituted (13.8.2009) (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), regs. 1(2), 7

#### Penalties and appeals

90P.—(1) An employer who fails to deliver [F14a paragraph 22 return] or any part of it in accordance with regulation 90N is liable to a penalty.

[F15(2) Table 2 sets out the penalties for employers for the tax year ending 5th April 2010, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

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**Status:** Point in time view as at 13/08/2009.

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**Table 2****Penalties: tax year ending 5th April 2010**

1 Number of employees for whom particulars should have been included with the return	2 Penalty
1-5	0
6-49	£100
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000

(2A) Table 3 sets out the penalties for employers for the tax years ending 5th April 2011 and subsequent years, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

**Table 3****Penalties: tax year ending 5th April 2011 and subsequent years**

1 Number of employees for whom particulars should have been included with the return	2 Penalty
1-5	£100
6-49	£300
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500



600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000]

- (3) An employer is not liable to a penalty if the employer had—
- (a) a reasonable excuse for failing to comply with regulation 90N which had not ceased at the time the [<sup>F16</sup>paragraph 22 return] was delivered, or
  - [<sup>F17</sup>(b) been subject to a penalty for failing to comply with regulation 205 of the PAYE Regulations (mandatory use of electronic communication for delivering relevant annual returns) in relation to the same tax year.]
- (4) A notice of appeal against a determination under section 100 of the Management Act of a penalty under this paragraph can only be on the grounds that—
- (a) the employer did comply with regulation 90N,
  - (b) the amount of the penalty is incorrect, or
  - (c) paragraph (3) applies.
- (5) Section 103A of the Management Act (interest on penalties) applies to penalties payable under this paragraph.

**Textual Amendments**

- F14** Words in [reg. 90P\(1\)](#) substituted (13.8.2009) (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), [regs. 1\(2\)](#), **8(a)**
- F15** [Reg. 90P\(2\)\(2A\)](#) substituted for [reg. 90P\(2\)](#) (13.8.2009) (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), [regs. 1\(2\)](#), **8(b)**
- F16** Words in [reg. 90P\(3\)\(a\)](#) substituted (13.8.2009) (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), [regs. 1\(2\)](#), **8(c)(i)**
- F17** [Reg. 90P\(3\)\(b\)](#) substituted (13.8.2009) (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2009 \(S.I. 2009/2028\)](#), [regs. 1\(2\)](#), **8(c)(ii)**

**Appeals: supplementary provisions**

**90Q.**—[<sup>F18</sup>(1) Section 31A(5) of the Management Act applies to appeals under regulation 90J as it applies to an appeal under section 31 of that Act.]

- [<sup>F19</sup>(2) .....
- [<sup>F19</sup>(3) .....

**Status:** Point in time view as at 13/08/2009.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Security (Contributions) Regulations 2001, PART 7A. (See end of Document for details)

#### Textual Amendments

- F18** Reg. 90Q(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 75(1)**
- F19** Reg. 90Q(2)(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 75(2)**

#### Interpretation

**90R.** In this Part “the Management Act” means the Taxes Management Act 1970.]

**Status:**

Point in time view as at 13/08/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Contributions) Regulations 2001, PART 7A.